

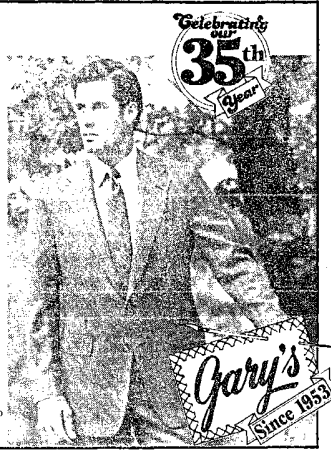
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Syracuse Herald-Journal, Thursday, December 1, 1988

Police report

Lawyer wants killer's sentence delayed

By Steven Billmyer Staff Writer

The defense attorney for Benjamin Killingsworth vowed to seek a court order by the end of the week to postpone the maximum prison sentence given the 22-year-old man on Wednesday.

Killingsworth was sentenced to 1 1/2 to four years in prison for causing the death of an 8-month-old boy, Reginald Phillips.

The sentence came despite last-minute attempts by defense attorney Salvatore Piemonte to get the judge to throw out the jury's verdict. He also asked that the sentencing be delayed.

Onondaga County Court Judge William Burke rejected the arguments and sentenced Killingsworth before a packed courtroom that included the defendant's sister, mother and other relatives.

A jury on Nov. 1 found Killingsworth, of 401 Marcellus St., guilty of criminally negligent homicide. The jury cleared Killingsworth of second-degree murder, first-degree

manslaughter and second-degree manslaughter.

After the sentencing, Piemonte said he would seek a stay of the sentence by the end of the week. The stay could free Killingsworth while Piemonte prepares an appeal. The lawyer had said Killingsworth's efforts to revive the child after he stopped breathing caused bruises. Those bruises had been interpreted as signs the baby had been beaten.

In court Wednesday, Piemonte said new evidence he obtained shows Onondaga County Medical Examiner Ben Mitchell may have misled the jury when he said he had not seen cardio-pulmonary resuscitation cause serious injuries like those found on the baby.

Piemonte said he has a copy of a study done by the Dade County Medical Examiner's office in Florida on injuries caused by proper and improper CPR efforts.

Mitchell worked for the Dade County Medical Examiner's office when the study was done, so he could have known about the cases

of damage caused by CPR, Piemonte said. The other new evidence shows an autopsy was done in Onondaga County was labeled a homicide when it turned out later the injuries were caused by CPR, Piemonte said.

Outside the courtroom, the defense attorney would not elaborate on the new evidence.

During the trial, the jury heard experts, including Mitchell, give conflicting testimony on whether the baby's injuries could have been caused during CPR.

Piemonte asked Burke to overturn the jury's verdict because, he said, "There is no proof of any criminal wrongdoing."

He also objected to the judge allowing the jury to consider the lesser charge of criminally negligent homicide, a crime that Killingsworth was not originally charged with.

Assistant District Attorney David Primo said the court had listened to the testimony that showed the baby had been left alone until Killingsworth before the baby died. Killingsworth was the only person who could have injured the baby, he said.

Primo asked the judge to sentence Killingsworth and give him the maximum sentence.

Burke rejected the arguments made by Piemonte asking the judge to overturn the verdict.

Piemonte then requested sentencing be adjourned because the pre-sentence report failed to adequately review Killingsworth's background.

"This man clearly cannot be sentenced on this report," he said. "Everyone wants to see the man get the maximum sentence. What is it that makes this man a candidate for a maximum state prison sentence?"

The judge, however, rejected the request for an adjournment, stating Piemonte had a chance to delay the proceedings Tuesday but said he wanted to go ahead with them.

Primo said he was pleased Killingsworth received the maximum sentence, but given the fact a child had died, he did not consider it a fair sentence.

"Justice wasn't done," Primo said.

Killingsworth's sister, Cassandra Butler, said she was not pleased with the verdict or the sentence. "Why give him a sentence like that when he has no record," she said outside the courtroom.

DWI charges

This person was charged by Syracuse police with driving while intoxicated:

Nov. 28
• Leroy Goings Jr., 51, of 1702 E. Fayette St. was arrested at 10:30 p.m. in front of his home. Police said Goings also was charged with refusing to take a breath test, refusing to take a chemical test and failing to sign.

Burglaries

This burglary was reported to Onondaga County sheriff's deputies:

Nov. 27
• East Molloy Road, DeWitt, 8200 block: Someone smashed out the front glass door at the East Molloy Road, but Deputies said when they arrived nothing appeared missing or out of order.

These burglaries were reported to Syracuse police:

Nov. 29
• Rich Street, 300 block: A microwave oven, an answering machine and two telephones were taken from Leanne Williams' home.

• Camp Avenue, 100 block: Someone ransacked Deborah A. Miskelly's home and took a hunting knife and a VCR worth \$200.

• Village Drive, 400 block: A tape deck and \$10 worth of coins were taken from Gary P. Gould's apartment while he was at work.

• Westcott Street, 200 block: Sheila Makaretska came home from a vacation in Florida to discover someone had taken a color television, a stereo and a telephone from her apartment.

• Delaware Street, 100 block: David Lowell came home and found his color television missing. He told police he looked through his house to see what else was taken and observed an unknown man leave the house. Lowell tried to chase the man, but was unable to catch him. The suspect got away with Lowell's microwave oven, his VCR, two televisions, two crystal glasses, a clock radio and a camera.

• Grant Boulevard, 1600 block: Pamela Adams told police while her husband was working on his car in the backyard, an unknown man rode into the driveway, left his bicycle, and took Adam's bike.

• Vine Street, 300 block: Several tools and a partially disassembled engine were taken from S.S. Automotive.

Nov. 28
• Carbon Street, 500 block: Someone removed the glass in the door at Robert Vasil's house and took an undetermined amount of money and six collectors coins.

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